IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7122 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINBHAI BHIMABHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7122 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the District Magistrate, District Surat, on 2.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that in passing of the order, the detaining authority took into consideration three offences registered against the petitioner before the Valod Police Station under sec. 66(1)(b), 65A & E, 116(2) and 81 of the Bombay Prohibition Act. The offences are registered on 31.7.2002, 11.8.2002 and 9.1.2003. According to the allegation, the petitioner was in possession of foreign liquor. Taking this fact into consideration and papers of investigation of the above said three offences, the detaining authority came to the conclusion that the petitioner was bootlegger within the meaning of PASA Act and his activities were prejudicial to the maintenance of public order and hence the impugned order came to be passed on 2.4.2003.

Ld. Advocate Mr. HR Prajapati for the petitioner and ld. AGP Ms. Panchal were heard at length.

The contention which requires to be examined and decided in the matter is whether the order passed for the detention is vitiated on account of delay. As seen from the record, the last offence relied upon by the detaining authority came to be registered against the petitioner on 9.1.2003 and the petitioner came to be arrested in the said offence on 2.2.2003, the order came to be passed which is impugned in this petition, only on 2.4.2003. Undoubtedly, therefore, there is delay of about three months in passing of the order. The facts of this case are squarely covered by a decision of this court in the matter of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad city as reported in 1997(1) GLH p. 381 and the decision of the Apex Court in the matter of Pradeep N. Paturkar v. S. Rammurthi, as reported in AIR 1994 SC 656. Therefore, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 2.4.2003 by the District Magistrate, District Surat, Surat, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

DS Permitted.

(J.R. VORA, J.)
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